



Agriculture Committee

Wednesday - March 29, 2006

1pm - 4pm

214 The Capitol

MEETING PACKET

Allan G. Bense
Speaker

Ralph Poppell
Dwight Stansel
Co-Chairs

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Agriculture Committee

Start Date and Time: Wednesday, March 29, 2006 01:00 pm

End Date and Time: Wednesday, March 29, 2006 04:00 pm

Location: 214 Capitol

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 7121 Disaster Preparedness Response and Recovery by Domestic Security Committee

HB 1153 Concealed Weapons by Coley

HB 1501 Agent Licensing by Berfield

HCB 6003 Resale of Tickets by Criminal Justice Committee, Stargel, Llorente



Consideration of the following proposed committee bill(s):

PCB AG 06-02 -- Department of Agriculture and Consumer Services

NOTICE FINALIZED on 03/27/2006 14:16 by SIMS-DAVIS.LINDA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1153 Concealed Weapons
SPONSOR(S): Coley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Kaiser 	Reese 
2) Military & Veteran Affairs Committee			
3) State Resources Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (department) authorizes the issuance and renewal of licenses to carry concealed weapons or firearms to persons qualified under the provisions of the Florida Statutes¹. A licensee who fails to renew his/her license on or before the expiration date must pay a \$15 late fee in order to renew the license. A license is deemed permanently expired, and will not be renewed, if 6 months or more have lapsed since its expiration. A person seeking renewal after permanent expiration must submit an application, an \$85 fee, and the documentation required under the weapons and firearms chapter of the Florida Statutes². The department currently makes every effort to accommodate active military personnel in the renewal of licenses without charging the late fee if license holders can show their military service impeded the renewal process.

The bill requires the department to extend the renewal period an additional 180 days for a concealed weapons permit if the license holder is serving in Operation Enduring Freedom or Operation Iraqi Freedom on the date the license expires.

This legislation has no fiscal impact on state or local government. The effective date of this legislation is July 1, 2006.

¹ s. 790.06, F.S.

² Chapter 790, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill provides an additional 180 days for renewal of a license to carry a concealed weapon for a licensee serving on active duty in any branch of the United State Armed Services and who is participating in Operation Enduring Freedom or Operation Iraqi Freedom.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Agriculture and Consumer Services (department) authorizes the issuance and renewal of licenses to carry concealed weapons or firearms to persons qualified under the provisions of s. 790.06, F.S. The license is valid for a period of five years from the date of issuance, and must be carried, along with valid identification, when the license holder is carrying his/her firearm in a concealed manner. The license and identification must be displayed to law enforcement officers upon demand. Violations of these provisions are a noncriminal violation with a fine of \$25.³

The department is required to notify a licensee no later than 90 days prior to the expiration date of his/her license. The notification is by mail and includes a renewal form. License holders are required to notify the department of permanent address changes or after having a license lost or destroyed. Notification must take place within 30 days of either event. Failure to notify the department results in a noncriminal violation that carries a \$25 fine for either offense.

A licensee who fails to renew his/her license on or before the expiration date must pay a \$15 late fee in order to renew the license. A license is deemed permanently expired, and will not be renewed, if 6 months or more have lapsed since its expiration. A person seeking renewal after permanent expiration must submit an application, an \$85 fee, and the documentation required under s. 790.06(5), F.S.

The department currently makes every effort to accommodate active military personnel in the renewal of licenses without charging the late fee if license holders can show their military service impeded the renewal process.

Effect of Proposed Changes

The bill requires the department to extend the renewal period an additional 180 days for a concealed weapons permit if the license holder is serving in Operation Enduring Freedom or Operation Iraqi Freedom on the date the license expires.

C. SECTION DIRECTORY:

Section 1: Amends s. 790.06, F.S.; provides for an additional 180 days for renewal of license to carry a concealed weapon for licensee serving on active duty in any branch of the United States Armed Services and who is participating in Operation Enduring Freedom or Operation Iraqi Freedom.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

³ s. 790.06(1), F.S.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would eliminate additional costs incurred by the public in renewing concealed weapons permits after the expiration date of the license.

D. FISCAL COMMENTS:

Although the Department of Agriculture and Consumer Service may not collect late fees from individuals who would benefit from the provisions of the bill, it would not fiscally impact the department due to the current practice of waiving late fees for military personnel whose military duty impedes the renewal process.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

HB 1153

2006

A bill to be entitled

An act relating to concealed weapons; amending s. 790.06, F.S.; providing that a licensee who is serving on active duty in any branch of the United States Armed Services and who is participating in Operation Enduring Freedom or Operation Iraqi Freedom on the date of the expiration of the license has an additional 180 days following the date the licensee returns to Florida in which to renew his or her license to carry a concealed weapon or a concealed firearm; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (11) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.--

(11) No less than 90 days before ~~prior to~~ the expiration date of the license, the Department of Agriculture and Consumer Services shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of Agriculture and Consumer Services. The licensee must renew his or her license on or before the expiration date by filing with the Department of Agriculture and Consumer Services the renewal form containing a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3), a color photograph as specified in paragraph (5)(e), and the required renewal fee. However, if a licensee is serving on active duty in any branch of the United

HB 1153

2006

29 States Armed Services and is participating in Operation Enduring
30 Freedom or Operation Iraqi Freedom on the date of the expiration
31 of the license, the licensee has an additional 180 days
32 following the date the licensee returns to this state in which
33 to renew his or her license to carry a concealed weapon or a
34 concealed firearm. Out-of-state residents must also submit a
35 completed fingerprint card and fingerprint processing fee. The
36 license shall be renewed upon receipt of the completed renewal
37 form, color photograph, appropriate payment of fees, and, if
38 applicable, a completed fingerprint card. Additionally, a
39 licensee who fails to file a renewal application on or before
40 its expiration date must renew his or her license by paying a
41 late fee of \$15. A ~~No~~ license may not ~~shall~~ be renewed 6 months
42 or more after its expiration date, and this ~~such~~ license is
43 ~~shall be~~ deemed to be permanently expired. A person whose
44 license has been permanently expired may reapply for licensure;
45 however, an application for licensure and fees under ~~pursuant to~~
46 subsection (5) must be submitted, and a background investigation
47 shall be conducted pursuant to ~~the provisions of~~ this section. A
48 person ~~Persons~~ who knowingly files ~~file~~ false information under
49 ~~pursuant to~~ this subsection is ~~shall be~~ subject to criminal
50 prosecution under s. 837.06.

51 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS


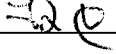
BILL #: HB 1501

Agent Licensing

SPONSOR(S): Berfield

TIED BILLS:

IDEN./SIM. BILLS: SB 2432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Blanchette 	Reese 
2) Insurance Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

Current law states "[w]ith respect to a prepaid limited health services contract, a person may not, unless licensed and appointed as a health insurance agent in accordance with the applicable provisions of the insurance code" solicit contracts or procure applications.

This bill provides that a person registered as a seller of travel with the Department of Agriculture and Consumer Services may engage in the solicitation and sale of prepaid limited health service insurance that covers the cost of transportation by an air ambulance when that air ambulance service is licensed under Florida law. However, the insurance policy for such coverage is subject to all applicable provisions of law pertaining to prepaid limited health service organizations.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Part I of Chapter 636, F.S., provides for the Office of Insurance Regulation (OIR) to license and regulate prepaid limited health service organizations (PLHSOs). These organizations are similar to health maintenance organizations, but are limited to the provision of the following services: ambulance, dental care, vision care, mental health, substance abuse, chiropractic care, podiatric care, and pharmaceutical services under s. 636.003(5), F.S. A PLHSO may not offer inpatient or surgical hospital services or emergency services, except as such services are incidental to a limited health service. PLHSO enrollees are under a prepayment arrangement (i.e., either a prepaid per capita sum or a prepaid aggregate fixed sum) and receive services from an exclusive panel of providers such as physicians, dentists, health providers or other persons or institutions which are licensed in Florida to deliver limited health services, as defined in s. 636.003(7), F.S.

According to representatives with the OIR, there are twenty-two authorized prepaid limited health service organizations which have received a certificate of authority to operate in Florida. Under s. 636.044, F.S., only licensed and appointed health insurance agents may sell PLHSO contracts. Officials with the Department of Financial Services (DFS) state that the agency licenses approximately 4,620 health or life, health and variable annuity agents which have been appointed to offer prepaid limited health service organization contracts. Although requirements vary by line of authority, general requirements for agent licensure include: being 18 years of age; submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints. Applicants for a resident agent license must be Florida residents. Once authorized, most lines of agents must take continuing education courses.¹

As provided under s. 636.005, F.S., PLHSOs must be incorporated, and they may be either a for-profit or not-for-profit corporation. Such an organization may be incorporated in a state other than Florida, if it maintains a certificate of authority or license in that state to provide the same services which it intends to provide in Florida at the time it applies for a certificate of authority from the OIR. Section 636.006, F.S., prohibits PLHSOs from transacting any insurance business, other than that specified under the act or under their certificate of authority.

Sellers of Travel

Under Part XI of Chapter 559, F.S., the Department of Agriculture and Consumer Services (DACS) is responsible for registering "sellers of travel," which is defined to mean any resident or nonresident who offers for sale, at wholesale or retail, prearranged travel or tour-guide services for individuals or groups.² Sellers of travel must annually register with the DACS, pay a fee of \$300 and receive a certificate evidencing proof of registration. If the seller of travel offers vacation certificates, the seller must obtain a performance bond not to exceed \$25,000.

¹ Chapter 626, F.S.

² Section 559.928, F.S.

Air Ambulance Services

Air ambulances services are regulated under Part III of Chapter 401, F.S., by the Department of Health (DOH). An "air ambulance" is defined to mean any fixed-wing or rotary-wing aircraft used for transporting sick or injured persons requiring, or likely to require, medical attention during transport.³ An "air ambulance service" means a publicly or privately owned service which is licensed by the DOH and which operates air ambulances to transport persons requiring medical attention during transport.⁴ To be licensed, an air ambulance service must apply to DOH, pay fees, meet specified standards and obtain insurance. To be permitted by the department, each transport vehicle is required to meet specified safety standards, have an appropriate communication system, and be furnished with essential medical supplies and equipment.

The United States Center for Disease Control and Prevention estimates that almost 50% of U.S. travelers heading to another country will experience some kind of health problem.⁵ A large majority of U.S. insurance companies, HMO's, PPO's, or Medicare do not provide adequate travel medical insurance, nor provide the necessary emergency medical evacuation which includes air ambulance transportation.⁶ International medical evacuation and air ambulance cost anywhere between \$8,000 and \$100,000 for a one-way flight.⁷ Air ambulances, sometimes the only way to safely transport a patient, are "specially equipped aircraft designed for relocating patients from one facility to another with continuous medical monitoring to ensure their safety."⁸

Effect of the Bill

This bill provides that a person registered as a seller of travel under s. 559.928, F.S., may engage in the solicitation and sale of prepaid limited health service insurance that covers the cost of transportation by an air ambulance when that air ambulance service is licensed under s. 401.251, F.S. However, the insurance policy for such coverage is subject to all applicable provisions pertaining to prepaid limited health service organizations under chapter 636, F.S.

The effect of this provision allows any travel agent as opposed to a health insurance agent to sell a prepaid limited health service contract to any person to cover the cost of transportation provided by an air ambulance service. An individual's own health insurance may cover the cost of such transportation as well.

C. SECTION DIRECTORY:

Section 1. Amends s. 636.044, F.S., to provide an exemption for persons registered in accordance with s. 559.928, F.S., as a seller of travel, to engage in the solicitation and sale of prepaid limited health service insurance that covers the cost of transportation by an air ambulance when that air ambulance service is licensed under s. 401.251, F.S.

Section 2. This act takes effect July 1, 2006.

³ Section 401.23(3), F.S.

⁴ Section 401.23(4), F.S.

⁵ www.worldwidemedical.com.

⁶ *Id.*

⁷ www.medjets.com/hlthcr.htm.

⁸ www.usairambulance.com/s-1/01.htm?usapn=8009481216.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: There may be an increase in the total amount of collected registration fees that are deposited by the Chief Financial Officer to the credit of the General Inspection Trust Fund of the Department of Agriculture and Consumer Services pursuant to s. 570.20.⁹
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

Companies that provide air ambulance services will economically benefit by no longer being required to have travel agents licensed as health insurance agents in order to sell insurance coverage (or prepaid contracts) for this service. Travel agents will also benefit by this change. An individual who purchases this product may be buying duplicate coverage as his or her own current health insurance may cover air ambulance transportation services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

⁹ Registration fees shall be \$300 per year per registrant according to s. 559.928(2).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The terms in the bill referring to “insurance” should be changed to “prepaid limited health service contracts.” The Department of Agriculture and Consumer Services has expressed concern about possible limited recourse for consumers (who have purchased insurance that covers the cost of transportation by an air ambulance) should the seller of travel subsequently go out of business before paying for that service.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

HB 1501

2006

A bill to be entitled

An act relating to agent licensing; amending s. 636.044, F.S.; authorizing certain travel agents to solicit and sell air ambulance transportation insurance under certain circumstances; providing requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 636.044, Florida Statutes, to read:

636.044 Agent licensing.--

(5) Notwithstanding the provisions of this section, a person registered in accordance with part XI of chapter 559 as a seller of travel may engage in the solicitation and sale of insurance covering the cost of transportation by air ambulance, as defined in s. 401.23(4), that is provided by an air ambulance service licensed pursuant to s. 401.251. The insurance policy providing this coverage is subject to all applicable provisions of this chapter.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HCB 6003 (PHCB CRJU 06-01)

(HBs 515 & 589) Resale of Tickets

SPONSOR(S): Stargel, Llorente, and others

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	6 Y, 1 N	Cunningham	Kramer
1) Agriculture Committee		Blanchette <i>OB</i>	Reese <i>IVE</i>
2) State Resources Council			
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

Currently, s. 817.36, F.S., states that it is a second degree misdemeanor for anyone to offer for sale or sell tickets "for admission to any sporting exhibition, athletic contest, theater, or any exhibition where an admission price is charged" for a price in excess of \$1 over the original retail price charged by the original seller.

This House Combined Bill adds "theme, amusement, or recreation park or entertainment complex" tickets to the above list, and increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller.

The bill provides an exception to the criminal penalty for tickets resold *at any price* so long as the resale is authorized by the ticket's original seller.

The bill also provides an exception to the criminal penalty for non-park tickets resold *at any price*, so long as the resale is made through an Internet website and the website operator makes and posts certain guarantees and disclosures to which a prospective purchaser is directed before completing the resale transaction. The bill defines "non-park ticket."

The bill further provides that sales tax for resales of admissions tickets must be submitted to the Department of Revenue in accordance with s. 212.04, F.S.

In short, this bill would allow *any person* to:

- Resell an admission ticket at an amount that is up to 25% more than the original retail price charged by the original seller;
- Resell an admission ticket *at any price* so long as the resale is authorized by the ticket's original seller;
- Resell a non-park ticket *at any price* through an Internet website where the website operator makes certain guarantees and disclosures.

This bill does not appear to have a significant fiscal impact.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → The bill increases the amount above retail price for which specified tickets may be resold without committing a second degree misdemeanor.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Ticket scalping is generally defined as the “reselling of tickets at a price higher than the established value.”¹ Legislation limiting or prohibiting ticket scalping has been criticized as limiting free enterprise. Commentators argue that once a person purchases a ticket, that person should be able to resell the ticket at any price.² Further, it has been argued that ticket scalping provides a service to those who are not willing to purchase tickets directly from the promoter.³ A contrary view is that ticket scalping limits the number of reasonably priced tickets because professional ticket scalpers purchase such a large number of the tickets from the promoter and limit the ability of the public to purchase tickets at retail prices.⁴ Further, ticket scalping can lead to the sale of fraudulent tickets.⁵

There are no federal laws directly governing ticket resales, but several states prohibit the reselling of tickets for an amount in excess of the face price.⁶ At least sixteen states prohibit or regulate the resale of tickets: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Rhode Island and Wisconsin.⁷ Regulatory schemes include allowing resales for no more than face value, permitting resales for higher prices by licensed ticket brokers, or allowing resales for a specified amount above face value.⁸

Section 817.36, Florida Statutes

Section 817.36, F.S., (Florida’s “ticket scalping statute”) was passed in 1945. Although there is no express legislative intent in the statute to explain why the statute was enacted, the Fifth District Court of Appeal discussed the purpose of the “ticket scalping” statute in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

We think the statute attempts to regulate areas of legitimate state concern—public events and tourism. Its obvious goal is to protect the consuming public and event promoters from the economic harm done to them by persons who artificially corner the market for tickets to public events. By making an exception for sellers of travel, it seeks to promote tourism, and regulate the travel industry. Similar statutes in other states have been upheld by the state courts... [T]icket scalpers deprive consumers of a valuable service--the availability of low-cost tickets through box office sources. The effect on the ticket market by scalpers who buy up available tickets for resale is to lessen public opportunity to buy

¹ Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects, and Criticisms of Current Anti-Scalping Legislation*, Seton Hall Journal of Sport Law, 5 SHJSL 189, 189 (1995).

² *Id.* at 189-90.

³ *Id.* at 191.

⁴ *Id.* at 192.

⁵ *Id.* at 192.

⁶ <http://www.ncsl.org/programs/lis/ticketscalplaws.htm>.

⁷ *Id.*

⁸ *Id.*

tickets at the lowest prices. Statutes like section 817.36 are designed to prevent unfair cornering of the market and limit opportunities to manipulate prices, both of which damage the general public and the promoters of public events.⁹

Currently, s. 817.36, F.S., states, in part, that it is a second degree misdemeanor¹⁰ for anyone to offer for sale or sell tickets for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged for a price in excess of \$1 over the original retail price charged by the original seller. The prohibition applies to travel agencies unless they are registered sellers of travel pursuant to part XI of chapter 559, F.S., resell such tickets as part of travel packages, and are reselling such tickets on behalf of the original sellers.¹¹

Effect of the Bill

As noted above, current law provides that it is a second degree misdemeanor for anyone to offer for sale or sell tickets for admission to sporting exhibitions, athletic contests, theaters, or any exhibition. The bill adds "theme, amusement, or recreation park" tickets and tickets to "entertainment complexes" to the above list, and increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller.

The bill provides an exception to the criminal penalty for tickets resold *at any price* so long as the resale is authorized by the ticket's original seller.

The bill also provides an exception to the criminal penalty for non-park tickets resold *at any price*, so long as the resale is made through an Internet website and the website operator makes and posts the following guarantees and disclosures to which a prospective purchaser is directed before completing the resale transaction:

1. The website operator guarantees a full refund of the amount paid for the ticket if:
 - a. The ticketed event is cancelled;
 - b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or
 - c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantee made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.
2. The website operator discloses through Internet web pages on which are visibly posted text, or links to web pages on which are posted text that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than its original value.

The bill clarifies that refunds must include servicing, handling, or processing fees unless such fees are declared non-refundable under the terms of the guarantee. "Non-park ticket" is defined by the bill as a ticket that is not for admission to a theme, amusement, or recreation park or entertainment complex or to a permanent exhibition or recreational activity within such a park.

⁹ *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

¹⁰ A second degree misdemeanor is punishable by a maximum of 60 days in jail and a maximum fine of \$500. See ss. 775.082, 775.083, F.S.

¹¹ See s. 817.36(2)(b), F.S. The exemption for registered sellers of travelers was challenged on due process and equal protection ground in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997). However, the court looked to the extensive requirements placed upon registered sellers of travel (e.g. they must be bonded and financially answerable to travelers injured by fraud, register annually with the state, provided extensive information concerning their business operations and agents, pay registration fees, keep records, etc...) and held that such heightened duties and responsibilities provided a legitimate basis for allowing them to sell tickets in a manner different from that allowed to the general public.

The bill further provides that sales tax for resales of admissions tickets must be submitted to the Department of Revenue in accordance with s. 212.04, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 817.36, F.S., increasing the maximum amount above retail price for which specified tickets may be resold without violating statute; providing an exception to the criminal penalty for resale of tickets authorized by the original seller; providing an exception to the criminal penalty for resale of certain tickets through an Internet website in specified circumstances; providing for sales tax collection on ticket resales.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private individuals may profit in that they will now be able to re-sell certain tickets at a price that is 25% more than the ticket's retail admission price. This could lead to the creation of businesses that resell tickets. Private individuals may also profit in that certain tickets may be resold *at any price* in certain circumstances.

D. FISCAL COMMENTS:

In 2004, the Office of the State Court Administrator reported that only 145 cases were filed for violations of s. 817.36, F.S.¹² The bill would likely reduce the number of filings under the statute and allow judges, prosecutors, and public defenders to devote time and resources to other cases.

¹² The information on filings came from the clerks of the courts in every Florida county except for Brevard, Nassau, St. Lucie, and Seminole.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently, s. 509.013, F.S., defines "theme park or entertainment complex" as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually. The terms, "amusement or recreation park" are not defined by the bill or by statute.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

HCB 6003 (for HBs 515, 589)

2006

A bill to be entitled

An act relating to resale of tickets; amending s. 817.36, F.S.; increasing the maximum amount above retail price for which specified tickets may be resold without violating statute; providing an exception to the criminal penalty for resale of tickets authorized by the original seller; providing an exception to the criminal penalty for resale of certain tickets through an Internet website in specified circumstances; providing for sales tax collection on ticket resales; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 817.36, Florida Statutes, is amended to read:

817.36 Resale of tickets of common carriers, places of amusement, etc.--

(2)(a) Whoever shall resell or offer for resale ~~sale or sell~~ any ticket good for admission to any sporting exhibition, athletic contest, theater, or other any exhibition, or to any theme, amusement, or recreation park or entertainment complex where an admission price is charged and request or receive a price in excess of 25 percent ~~\$1~~ above the retail admission price charged therefor by the original seller of the ~~said~~ ticket ~~commits shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) The provisions of paragraph (a) shall not prohibit the resale or offer for resale of a ticket, at any price, if such resale or offer is authorized by the ticket's original seller.

(c) The provisions of paragraph (a) also shall not prohibit the resale or offer for resale of a non-park ticket, at any price, if such resale or offer is made through an Internet website and the website operator makes and posts the following guarantees and disclosures through Internet web pages on which are visibly posted text, or links to web pages on which are posted text, to which a prospective purchaser is directed before completion of the resale transaction:

1. The website operator guarantees a full refund of the amount paid for the ticket if:

a. The ticketed event is canceled;

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or

c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.

2. The website operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their original value.

A refund under subparagraph 1. shall include any servicing, handling, or processing fees unless such fees are declared

HCB 6003 (for HBs 515, 589)

2006

55 nonrefundable under the terms of the guarantee. For purposes of
56 this paragraph, the term "non-park ticket" means a ticket that is
57 not for admission to a theme, amusement, or recreation park or
58 entertainment complex or to a permanent exhibition or
59 recreational activity within such a park or complex.

60 ~~(d)(b)~~ The provisions of paragraph (a) ~~this subsection~~
61 shall apply to travel agencies that have an established place of
62 business in this state, which place of business is required to
63 pay state, county, and city occupational license taxes, unless
64 such agencies are registered sellers of travel pursuant to part
65 XI of chapter 559 and adhere to the restriction of selling said
66 tickets as part of the travel packages specified in that part,
67 and such travel agencies are reselling said tickets on behalf of
68 the original sellers of said tickets. When any original seller
69 of tickets provides a travel agency with tickets in bulk, the
70 travel agent shall be deemed to be reselling the tickets on
71 behalf of the original seller.

72 (e) Any sales tax due for resales under this subsection
73 shall be remitted to the Department of Revenue in accordance
74 with s. 212.04.

75 Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HCB 6003

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Committee hearing bill: **Agriculture**

Representatives **Stargel and Llorente** offered the following:

Amendment (with title amendment)

Between line(s) 13-14, insert:

Section 1. Section 817.357, Florida Statutes, is created to read:

817.357 Purchase of tickets.—Whoever knowingly purchases from the original seller and intends to resell a quantity of tickets to an event which exceeds the maximum amount posted by or on behalf of the original ticket seller at the point of original sale or printed on the tickets themselves commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. No person or firm shall have any liability under this section with respect to tickets for which that person or firm is the original ticket seller or for which that person or firm provides contracted services for such original ticket seller in connection with such sales.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. **1**

22 ===== T I T L E A M E N D M E N T =====

23 Remove line 2 and insert:

24 An act relating to resale of tickets; creating s. 817.357, F.S.;

25 providing a criminal penalty for purchasing tickets in excess of


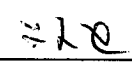
26 the maximum number allowed with the intent to resell those

27 tickets; amending s. 817.36,

28

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

PCB #: HB 7121 **PCB DS 06-02** Disaster Preparedness, Response, and Recovery
SPONSOR(S): Domestic Security Committee
TIED PCBS: **IDEN./SIM. PCBS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Domestic Security Committee	9 Y, 0 N	Wiggins	Newton
1) Agriculture Committee		Kaiser 	Reese 
2) Finance & Tax Committee			
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

Because of the very active 2004 and 2005 hurricane seasons, specifically the devastation left from Hurricanes Wilma and Katrina, a number of issues were raised across Florida on disaster preparedness, response and recovery. In an effort to better understand the issues specific to Florida's ability to deal with and recover from disasters, the Domestic Security Committee and the Health Care General Committee held two joint committee meetings to hear testimony and take comments on disaster-related issues. In conjunction with the Health Care General Committee's bill on special needs sheltering, the Domestic Security Committee has addressed areas of concern related to emergency supplies, availability of motor fuels and disaster preparedness.

The bill creates the Florida Disaster Supplier Program Council (council). The council consists of seven members and is composed of one county emergency management director from each of the seven Division of Emergency operational regions as designated by the Florida Emergency Preparedness Association. This council is tasked with developing specific criteria for the voluntary Florida Disaster Supplier Program (program) by February 1, 2007. The purpose of the program is to facilitate access to supplies during an emergency and to inform state residents of the availability of crucial supplies before, during and after a disaster.

The bill creates the Florida Disaster Motor Fuel Supplier Program (program) within the Department of Community Affairs. The program allows motor fuel retail outlets doing business in the state to participate in a network of emergency responders to provide fuel supplies and services to government, medical, critical infrastructure and other responders, as well as the general public in a disaster.

The bill requires all multi-family dwellings that are at least 75 feet tall to have at least one elevator that is capable of operation on an alternate generated power source available to residents for a number of hours each day over a 5-day period following a disaster.

The bill specifies the statewide public disaster awareness campaign must include information on personal responsibility for individual citizens for up to 72 hours following a disaster. The campaign must also promote statewide disaster plans, evacuation routes, fuel suppliers, sheltering information. The materials must be available in alternative formats and mediums.

While the bill has a minimal fiscal impact on state government, there is a significant impact on the private sector. The effective date of this legislation is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes - The bill allows for motor fuel retail outlets that participate in the Florida Disaster Motor Fuel Supplier Program to receive a state tax credit of up to 25 percent of the value of the purchase of equipment and installation required by this program.

Safeguard Individual Liberty - The bill provides for the creation of a program that will empower businesses to operate during a disaster. The program will provide options to individuals when obtaining supplies and fuel to maintain normalcy before, during and after a disaster strikes.

Promote Personal Responsibility - The bill specifies that the intensive public educational campaign focus on emergency preparedness issues promoting self sufficiency of citizens for up to 72 hours following a disaster. It encourages the public to make arrangements for the care of individuals with special needs or in need of assistance, to be familiar with evacuation routes, disaster plans, shelter information, and fuel and consumer suppliers.

Empower Families - The bill decreases the burdens of government on families by providing options to obtain needed supplies for their families during a disaster. It provides families choices when making crucial decisions that will affect their safety and well being during a disaster. It decreases the dependence of families on government support and/or assistance by educating the public regarding disaster preparedness. The public awareness program will specifically encourage families to prepare for disasters and review evacuation plans, thus increasing family stability.

Maintains Public Security - The bill increases the physical security of citizens and their property by providing citizens with options during disasters. These options help families secure their homes and businesses. The Florida Disaster Motor Fuel Supplier Program assists health care facilities by enabling them to remain operational during a disaster and by assisting critical care workers to obtain fuel so they may return to work. If health care centers are able to remain operational, law enforcement may devote its time and energy to public security and disaster needs, such as recovery and rescue.

B. EFFECT OF PROPOSED CHANGES:

Florida Disaster Supplier Program and the Florida Disaster Supplier Program Council:

At present, supplies to communities are provided through government agencies and private assistance following a disaster. Businesses that are able to maintain power during a disaster or have an alternate power source may sell their goods and services. There are no identified State Emergency Response Team (SERT) businesses that supply needed supplies and fuel to the public and SERT members following a disaster. There are no provisions that allow SERT members and critical care health providers to acquire fuel during a disaster.

Proposed Situation

The Florida Disaster Supplier Program Council (council) is established within the Department of Community Affairs to make recommendations to the Governor and Legislature on the creation of a voluntary Florida Disaster Supplier Program (program). The council consists of seven members, one from each of the operational regions of the Division of Emergency Management (division). The bill sets forth criteria for the council relating to:

- Election of a chair and vice chair;
- When the council shall meet;
- Duration of service;
- Vacancies on the council;

- Compensation for service; and,
- Termination of the council as of July 1, 2008.

The duties and responsibilities of the council include recommending to the division:

- State disaster preparedness criteria necessary for implementation of the program.
- The most effective means of providing access to businesses partnering in the program to facilitate the operation, supply, and staffing of such businesses under emergency situations.
- A statewide system of certification during a disaster for suppliers of pharmaceuticals, food and water, building supplies, ice, and other categories deemed necessary by the council.
- If deemed necessary by the council, an annual program membership fee for businesses voluntarily seeking to obtain certification as a state disaster supplier.
- A State Emergency Response Team (SERT) logo bearing the name of the state of Florida and the type of supplies being provided by the supplier for display by businesses participating in the program.

The intended purposes of the program are:

- To provide statewide oversight of the availability and provision of necessary supplies prior to, during, and following a state of emergency or natural or manmade disaster or catastrophe.
- To assist in the rapid recovery of an area affected by a natural or manmade disaster or catastrophe.
- To provide the public with alternative access to certain commodities as recommended by the council.

The bill provides that participation in the program is optional, with each county governing body choosing whether the county will participate or not. Counties choosing to participate shall be responsible for administering the program within that county. The council will recommend guidelines and standards for participation. The program allows for businesses to participate even though the county in which the business is located chose not to participate. The program is not intended to interfere with normal and ongoing commerce occurring at the local government level.

Businesses wishing to participate in the program shall be certified through the county emergency management agencies, using certification standards developed by the council. If an annual program membership fee is assessed, the method of collection of said fee shall be determined by the council. Program membership fees shall be used, by the participating counties and state agencies, to recover administrative costs of the program or as recommended by the council.

By February 1, 2007, the council must submit a report, relating to the development and implementation of the program, to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The bill provides criteria to be included in the report.

Motor Fuel Dispensing Facilities:

Motor fuel terminal facilities supplying motor fuel to retail outlets around the state are not required to have an auxiliary source of electrical power. A lack of emergency electrical power in retail outlets creates a serious deficiency in the available mobile fuel supplies prior, during, and after a disaster has occurred. Fuel remaining in the storage tanks of retail outlets is inaccessible until primary electrical power is restored. The lack of available mobile fuel directly affects the evacuation, response, and recovery efforts in a disaster area.

Proposed Situation

The bill creates s. 526.143, F.S., requiring each motor fuel terminal dispensing facility to operate its distribution loading racks using an alternate power source for a minimum of 72 hours following a disaster. The emergency auxiliary equipment must be operational 36 hours after the disaster. All newly

constructed or substantially renovated¹ motor fuel retail outlets, with a certificate of occupancy on or after July 1, 2006, must also have an appropriate transfer switch capable of operating all fuel pumps using an alternate power source. The bill requires local and state inspections of auxiliary equipment to be completed and proof of those inspections to be available before a facility may be deemed to be in compliance and able to participate in the fuel supplier program.

By December 31, 2006, all motor fuel retail outlets that are within one-half mile of an interstate highway or a state or federally designated evacuation route must be pre-wired with an appropriate transfer switch capable of operating all required equipment using an alternate power source within the following specifications based on populations:

- 16 or more fueling positions located in counties with a population of 300,000 or more;
- 12 or more fueling positions located in counties with a population of 100,000 to 299,999 ; or
- 8 or more fueling positions located in counties with a population of 99,999 or less residents.

The bill requires installation and wiring to be completed by a certified electrical contractor, with owners of motor fuel retail outlets keeping documentation of such installation on site or at its corporate headquarters. Additionally, each retail outlet must maintain written records confirming periodic testing and ensured operational capacity of the equipment. These records must be made available, upon request, to the Division of Emergency Management and the county emergency management agency.

The requirement for motor fuel retail outlets to be pre-wired does not apply to:

- Automobile dealers;
- Persons who operate a fleet of motor vehicles; or
- Persons who sell motor fuel exclusively to a fleet of motor vehicles.

The bill provides a severability clause stating that if any provision of s. 526.143, F.S., or its application to any person or circumstance, is held invalid the invalidity does not affect other provisions or applications of s. 526.143, F.S.

Florida Disaster Motor Fuel Supplier Program:

The bill creates the Florida Disaster Motor Fuel Supplier Program (program) within the Department of Community Affairs to allow motor fuel retail outlets, doing business in the state, to participate in a network of emergency responders authorized to provide fuel supplies and services before, during, and after a declared disaster. Participation in the program is optional. In counties choosing to participate, the local county emergency management agency will be responsible for administering the program within that county. In counties choosing not to participate, the Division of Emergency Management (division) shall have the authority to certify businesses as members of the State Emergency Response Team (SERT). The division shall recommend guidelines and standards for participation.

Participation in the program shall require certification, which will be established by the division or the local county emergency management director no later than July 1, 2007. Businesses that are certified will be issued a SERT logo for public display to alert responders and the public that the business is capable of assisting, as needed, following a disaster or an emergency. Businesses certified as a SERT member must be able to provide fuel dispensing services to other SERT members within 36 hours after a disaster has occurred or demonstrate the ability and agree to make services available as needed. The bill provides for SERT members to sell motor fuel through a pre-existing contract with local, state, and federal response agencies or to provide point-of-sale service to such agencies. Additionally, SERT members may sell motor fuel to the general public, or may be directed to do so by the county or state emergency management officials. The bill provides for law enforcement security to be provided, if requested, to maintain civil order during operating hours.

¹ Substantially renovated is defined as "...a renovation that results in an increase of greater than 50 percent in the assessed value of the motor fuel retail outlet."

SERT members shall be given priority when purchasing fuel. Businesses who are SERT members may be directed to remain open during a declared curfew to provide service for emergency management personnel. Under such direction, neither the SERT member nor the emergency management personnel shall be in violation of such curfew. SERT members traveling during periods of declared curfews shall be required to produce valid documentation of SERT membership.

Retail motor fuel outlets, designated as SERT members, may request priority consideration relating to resupply of motor fuel to continue to provide fuel and necessary services to emergency responders. Emergency management agencies shall take such requests into account when determining appropriate disaster response protocol.

Motor fuel outlets choosing to participate in the program may receive a tax credit from the Florida Department of Revenue (DOR) of up to 25 percent of the value of the purchase of equipment and the installation required to meet certification standards established by the Division of Emergency Management's local county emergency management director. The tax credit may not exceed \$15,000. The bill provides for the DOR to develop forms and procedures related to applying for the tax credit.

The bill also preempts regulation of and requirements for the siting and placement of an alternate power source at motor fuel terminal facilities, wholesalers, and retail sales outlets to the state.

By March 1, 2007, the Department of Environmental Protections' Energy Office shall review and provide a report to the Legislature, including the status of the motor fuel supply program and a list of participating retail fuel outlets.

Access to Residential Multi-Family Dwellings for Emergency Purposes:

According to the 2001 and 2004 Florida Building Code², multi-family residential high-rise buildings³ must have an emergency system that provides for emergency elevator operation and lighting. The 2004 building code intends for the emergency use of the elevator to be for evacuation, medical, and rescue assistance only. Certified inspectors that conduct annual elevator inspections must confirm that all installed generators are in working order and that a generator key is present in the lockbox at or near the installed generator. If the building does not have an installed generator, the inspector must confirm that the appropriate pre-wiring and switching capabilities are operational and a contract exists for an alternate power source.

Proposed Situation

The bill requires all multifamily dwellings, as defined in the 2004 Florida Building Code, as well as all newly constructed multifamily dwellings that are at least 75 feet high, to have at least one public elevator that is capable of operating on an alternate power source for a specified number of hours each day over a 5-day period following a disaster that disrupts the normal supply of electricity. The alternate power source, which controls elevator operation, must also be capable of powering any connected fire alarm system in the building, as well as all required emergency lighting to portions of the building used by the public.

Each multi-family dwelling must have an available generator and fuel source on the property or have proof of a current guaranteed service contract for such equipment and fuel source for elevator operation on an on-call basis within 24 hours after a request. By December 31, 2007, compliance with installation requirements and operational capability requirements must be verified by local building inspectors and reported to the emergency management director of the county. In regards to newly constructed multifamily dwellings, installation and operational capability requirements must be verified by local building inspectors and reported to the emergency management director of the county prior to occupancy.

² ss. 1016.2 and 1006.2, respectively

³ Defined as buildings having occupied floors located more than 75 feet above the lowest level of fire department vehicle access.

The bill requires each person, firm, or corporation required to maintain an alternate power source under s. 553.509(4), F.S., to also maintain a written operations plan detailing the sequence of operations before, during, and after a disaster or emergency situation. The bill provides criteria to be included in the operations plan, such as:

- A life safety plan for evacuation;
- Maintenance of the electrical and lighting supply; and,
- Provisions for the health, safety, and welfare of the residents.

Additionally, the owners or operators of the multifamily dwelling must keep, on file, written records of inspections of all equipment, indicating the equipment is in good working order, as well as any contracts for alternate power generation equipment. The operations plan and inspection records are to be provided to local and state government agencies, when requested, for review. The bill requires the owner or operator of a multifamily dwelling to keep a generator key in a lockbox posted at or near any installed generator unit.

The bill requires owners of multistory affordable residential dwellings for persons age 62 and older to make every effort to obtain grant funding to comply with the requirements of s. 553.509(4), F.S. If this is not possible, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a disaster or an emergency situation that disrupts the normal supply of electricity for an extended period of time.

The bill revises the requirements for annual elevator inspections to confirm installed generators are in working order, inspection records are current, the lockbox with key are in the appropriate location, and, if the building does not have a generator, the appropriate wiring and switching capabilities are operational and there is a valid contract for alternate power in effect.

Public Awareness Campaign:

Florida law creates the Division of Emergency Management (division) within the Department of Community Affairs. One of the duties of the division is to institute a statewide public awareness campaign on emergency preparedness issues.⁴

In furthering that cause, the bill expands the information in the campaign to include:

- The personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.
- Relevant information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters.

The bill provides for all educational materials to be available in alternative formats and mediums to ensure they're available to persons with disabilities.

The bill requires the division and the Department of Education to coordinate with the Agency for Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in need of assistance but are not defined under special-needs criteria.

C. SECTION DIRECTORY:

Section 1. Creates s. 252.63, F.S.; establishing the Florida Disaster Supplier Program Council, and the Florida Disaster Supplier Program, providing for its composition, governance, and duties.

Section 2. Creates s. 526.143, F.S.; establishing criteria for alternate generated power capacity for motor fuel dispensing facilities.

⁴ s. 252.35(2)(i), F.S.

Section 3. Creates s. 526.144, F.S.; establishing the Florida Disaster Motor Fuel Supplier Program.

Section 4. Creates s. 553.509(4), F.S.; establishing criteria for alternate generated power source for residential multifamily dwellings providing emergency vertical accessibility.

Section 5. Amends s. 252.35, F.S.; providing for additional information to be included in the Division of Emergency Management's Public Awareness Campaign.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The impact of the tax credit on state revenues is indeterminate at this time.

2. Expenditures:

The Department of Agriculture and Consumer Services states that inspections required by this legislation can be handled within existing resources.

Department of Community Affairs

	<u>FY 06-07</u>	<u>FY 07-08</u>	<u>FY 08-09</u>
Non-Recurring	\$ -	\$ 76,150	\$ 479,400
Recurring	<u>826,150</u>	<u>1,229,400</u>	<u>750,000</u>
Total	<u>\$826,150</u>	<u>\$1,305,550</u>	<u>\$1,229,400</u>

Florida Disaster Supplier Program Council total estimated cost: \$76,150 (years 1 & 2).

Florida Disaster Fuel Supplier Program total estimated cost: \$479,400 (years 2 & 3).

No additional resources needed (in year 1) if Governor's emergency management public education and outreach initiative is appropriated by the Legislature: \$750,000 (recurring). If the Governor's initiative is not appropriated, \$826,150 will be needed for year 1 with \$750,000 needed annually for years 2 & 3.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on the private sector will include the purchase and installation of a transfer switch for each building unit or the purchase and installation of a generator. The transfer switch must be able to accept an alternate power source. The cost of the transfer switch is approximately \$6,000 to \$10,000 depending on the specifications of the building. The purchase of a generator is approximately

\$300 to \$500 per kilowatt⁵. Cost estimates will vary depending on the size and needs of each building. Businesses can choose to contract with a service provider if they do not want to incur the cost of purchasing a generator. The service contract costs will vary depending on the need, size, and specification of the building.

The Florida Disaster Supplier Program Council (council) will be surveying local districts and local stakeholders to estimate the anticipated expenditures and costs of the Florida Disaster Supplier Program on the local level. Those costs will be included in the council's report, due February 1, 2007, to the Governor, the Speaker of the Florida House of Representatives, and the President of the Florida Senate.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED PCB CHANGES

An amendment adopted by Committee on Domestic Security added language providing for multi-story affordable dwellings for persons age 62 and older that are insured or financed by United States Department of Housing and Urban Development to seek funding for compliance with this bill. If these building owners are unable to comply with the emergency power requirements of the bill, they must work with local emergency management agencies to provide a plan for the safety of their residents during natural or manmade disasters.

⁵ www.northerntool.com

HB 7121

2006

1 A bill to be entitled
2 An act relating to disaster preparedness response and
3 recovery; creating s. 252.63, F.S.; creating the Florida
4 Disaster Supplier Program Council under the Department of
5 Community Affairs; requiring the council to make
6 recommendations for a voluntary local program to be
7 established as the Florida Disaster Supplier Program;
8 providing membership and organization of the council;
9 providing duties and responsibilities of the council;
10 authorizing the council to recommend the assessment of an
11 annual program membership fee; providing for certification
12 of program participants; providing requirements with
13 respect to collection and use of program membership fees;
14 requiring the council to submit a report; providing for
15 termination of the council; providing intended purposes of
16 the program; providing that participation in the program
17 shall be at the option of each county; providing for
18 administration of the program by participating counties;
19 creating s. 526.143, F.S.; providing that each motor fuel
20 terminal facility and wholesaler that sells motor fuel in
21 the state must be capable of operating its distribution
22 loading racks using an alternate power source for a
23 specified period by a certain date; providing requirements
24 with respect to the operation of such equipment following
25 a major disaster; providing requirements with respect to
26 inspection of such equipment; requiring newly constructed
27 or substantially renovated motor fuel retail outlets to be
28 capable of operation using an alternate power source;

Page 1 of 20

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb7121-00

HB 7121

2006

29 defining "substantially renovated"; providing inspection
30 requirements; requiring certain motor fuel retail outlets
31 located within a specified distance from an interstate
32 highway or state or federally designated evacuation route
33 to be capable of operation using an alternate power source
34 by a specified date; providing inspection and
35 recordkeeping requirements; providing applicability;
36 providing severability; creating s. 526.144, F.S.;
37 creating the Florida Disaster Motor Fuel Supplier Program
38 within the Department of Community Affairs; providing
39 purpose of the program; providing requirements for
40 participation in the program; providing that participation
41 in the program shall be at the option of each county;
42 providing for administration of the program; providing
43 requirements of businesses certified as State Emergency
44 Response Team members; providing for a credit against
45 motor fuel tax collections to any owner of a retail motor
46 fuel outlet for the purchase and installation of equipment
47 required to meet program certification requirements;
48 providing a limitation; requiring the Department of
49 Revenue to provide forms and procedures for the credit by
50 rule; providing for preemption to the state of the
51 regulation of and requirements for siting and placement of
52 an alternate power source and any related equipment at
53 motor fuel terminal facilities, wholesalers, and retail
54 sales outlets; providing for review of the program;
55 providing a report; amending s. 553.509, F.S., relating to
56 requirements with respect to vertical accessibility under

HB 7121

2006

pt. II of ch. 553, F.S., the "Florida Americans With Disabilities Accessibility Implementation Act"; requiring specified existing and newly constructed residential multifamily dwellings to have at least one public elevator that is capable of operating on an alternate power source for emergency purposes; providing requirements with respect to the alternate power source; providing for verification of compliance by specified dates; providing requirements with respect to emergency operations plans and inspection records; requiring any person, firm, or corporation that owns or operates specified multistory affordable residential dwellings to attempt to obtain grant funding to comply with the act; requiring an owner or operator of such a dwelling to develop an evacuation plan in the absence of compliance with the act; providing additional inspection requirements under ch. 399, F.S., the "Elevator Safety Act"; amending s. 252.35, F.S.; expanding the duty of the Division of Emergency Management to conduct a public educational campaign on emergency preparedness issues; providing an additional duty of the division with respect to educational outreach concerning disaster preparedness; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 252.63, Florida Statutes, is created to read:

HB 7121

2006

84 252.63 Florida Disaster Supplier Program Council; Florida
85 Disaster Supplier Program.--

86 (1) FLORIDA DISASTER SUPPLIER PROGRAM COUNCIL.--

87 (a) The Florida Disaster Supplier Program Council is
88 created under the Department of Community Affairs. The council
89 shall make recommendations for a voluntary local program to be
90 established as the Florida Disaster Supplier Program. The
91 council shall make recommendations for the effective and
92 efficient administration of the Florida Disaster Supplier
93 Program.

94 (b)1. The council shall consist of seven members,
95 comprised of the county emergency management directors from each
96 of the seven emergency response regions of the Division of
97 Emergency Management as designated by the Florida Emergency
98 Preparedness Association.

99 2. The members of the council shall elect a chair and a
100 vice chair from among their membership. The chair shall preside
101 at all meetings of the council.

102 3. The council shall meet at the call of the chair or at
103 the request of a majority of its membership.

104 4. Members shall serve for the duration of the existence
105 of the council. A vacancy on the council shall be filled by the
106 chair according to the original membership stipulations until
107 the council is terminated.

108 5. Members of the council shall serve without
109 compensation, but shall be entitled to per diem and travel
110 expenses as provided in s. 112.061 while engaged in the
111 performance of their official duties.

HB 7121

2006

112 (c) Duties and responsibilities of the council shall
113 include, but not be limited to, recommending to the division:

114 1. State disaster preparedness criteria necessary for
115 implementation of the Florida Disaster Supplier Program.

116 2. The most effective means of providing access to
117 businesses participating in the program in order to facilitate
118 the operation, supply, and staffing of such businesses, as
119 feasible, under emergency conditions.

120 3. A statewide system of certification for disaster
121 suppliers in the following categories:

122 a. Pharmaceutical.

123 b. Food and water.

124 c. Building supplies.

125 d. Ice.

126 e. Other categories as deemed necessary by the council.

127 4. If deemed necessary by the council, the assessment of
128 an annual program membership fee for businesses voluntarily
129 seeking to obtain certification as a state disaster supplier
130 under the established program guidelines. The determination of
131 the necessity of assessing an annual program membership fee
132 shall include county surveys and input from business, industry,
133 and state agencies. Any recommendation with respect to the
134 assessment of program fees shall be contained in the report
135 required under subsection (5).

136 5. A State Emergency Response Team logo that bears the
137 name of the State of Florida and the type of supplies being
138 provided by the supplier for display by businesses participating
139 in the program.

HB 7121

2006

140 (2) FLORIDA DISASTER SUPPLIER PROGRAM.--

141 (a) The Florida Disaster Supplier Program Council shall
142 make recommendations for a voluntary local program to be
143 established as the Florida Disaster Supplier Program. The
144 intended purposes of the program are:

145 1. To provide statewide oversight of the availability and
146 provision of necessary supplies prior to, during, and following
147 a state of emergency or natural or manmade disaster or
148 catastrophe.

149 2. To assist in the rapid recovery of an area affected by
150 a natural or manmade disaster or catastrophe and to immediately
151 stimulate the postdisaster recovery of local economies.

152 3. To provide the public with alternative access to
153 certain commodities as recommended by the Florida Disaster
154 Supplier Program Council.

155 (b) Participation in the Florida Disaster Supplier Program
156 shall be at the option of each county governing body. Each
157 county choosing to participate in the program shall be
158 responsible for administering the program within that county.
159 Guidelines and administration standards for participating
160 counties shall be recommended by the Florida Disaster Supplier
161 Program Council.

162 (c) The Florida Disaster Supplier Program shall allow
163 businesses in counties that choose not to participate in the
164 program to voluntarily participate in the program and provide
165 for the sale of emergency-use supplies and services before,
166 during, and following an emergency or natural or manmade

HB 7121

2006

disaster or catastrophe under the conditions set forth in this section.

(d) The Florida Disaster Supplier Program shall be designed to in no way interfere with normal and ongoing commerce occurring in any political subdivision of the state.

(3) PROGRAM CERTIFICATION.--Upon the recommendation of the council, certification of a business requesting to participate in the program shall be conducted through county emergency management agencies or designees as prescribed by the county's elected governing body. Participating counties shall use certification standards developed by the council.

(4) COLLECTION AND USE OF PROGRAM MEMBERSHIP FEES.--If an annual program membership fee is assessed as provided in subparagraph (1)(c)4., the methods for collecting such fee shall be determined by the council. Program membership fees collected shall be used in whole or in part to recover the administrative costs of the program and as may be recommended by the council. Program membership fees shall be used by the participating counties and state agencies as may be determined by the recommendations of the council and as provided by law.

(5) REPORT.--The council shall submit a report on the development and implementation of the Florida Disaster Supplier Program to the Governor, the Speaker of the House of Representatives, and the President of the Senate no later than February 1, 2007. The report shall include recommendations for any needed legislation and program fees and an analysis of the program's effect on the provision of supplies within the state

HB 7121

2006

during a state of emergency or natural or manmade disaster or
catastrophe.

(6) TERMINATION.--The council shall terminate on July 1,
2008.

Section 2. Section 526.143, Florida Statutes, is created
to read:

526.143 Alternate means of power generation for motor fuel
dispensing facilities.--

(1) No later than December 31, 2006, each motor fuel
terminal facility, as defined in s. 526.303(16), and wholesaler,
as defined in s. 526.303(17), that sells motor fuel in this
state must be capable of operating its distribution loading
racks using an alternate power source for a minimum of 72 hours.
Pending a postdisaster examination of the equipment by the
operator to determine any extenuating damage that would render
it inoperable or unsafe to use, the facility must have such
alternate power source available for operation no later than 36
hours after a major disaster, as defined in s. 252.34. Initial
inspection for proper installation and operation shall be
completed by a local building inspector, and verification of the
inspection must be submitted to the local county emergency
management agency. Inspectors from the Department of Agriculture
and Consumer Services shall perform a periodic visual inspection
of the alternate power source to ensure that the emergency
auxiliary electrical equipment is installed. Each facility shall
perform annual inspections to ensure that the emergency
auxiliary electrical generators are in good working order and

HB 7121

2006

show proof of those inspections in order to be deemed in
compliance with and to participate in the fuel supplier program.

(2) Each newly constructed or substantially renovated
motor fuel retail outlet, as defined in s. 526.303(14), for
which a certificate of occupancy is issued on or after July 1,
2006, must be prewired with an appropriate transfer switch and
be capable of operating all fuel pumps, dispensing equipment,
life-safety systems, and payment acceptance equipment using an
alternate power source. As used in this subsection, the term
"substantially renovated" means a renovation that results in an
increase of greater than 50 percent in the assessed value of the
motor fuel retail outlet. Local building inspectors shall
include an equipment and operations check for compliance with
this subsection in the normal inspection process before issuing
a certificate of occupancy. A copy of the certificate of
occupancy shall be provided to the county emergency management
agency upon issuance of such certificate. Each facility shall
perform periodic inspections to ensure that the installed
transfer switch and emergency auxiliary electrical generators
are in good working order and provide proof of those inspections
to the county emergency management agency in order to be in
compliance with and to participate in the Florida Disaster Motor
Fuel Supplier Program under s. 526.144.

(3) (a) No later than December 31, 2006, each motor fuel
retail outlet described in subparagraph 1., subparagraph 2., or
subparagraph 3. that is located within 1/2 mile of an interstate
highway or state or federally designated evacuation route must
be prewired with an appropriate transfer switch and be capable

HB 7121

2006

of operating all fuel pumps, dispensing equipment, life-safety systems, and payment-acceptance equipment using an alternate power source:

1. A motor fuel retail outlet located in a county having a population of 300,000 or more which has 16 or more fueling positions.

2. A motor fuel retail outlet located in a county having a population of 100,000 or more, but fewer than 300,000, which has 12 or more fueling positions.

3. A motor fuel retail outlet located in a county having a population of fewer than 100,000 which has eight or more fueling positions.

(b) Installation of the wiring and transfer switch shall be performed by a certified electrical contractor. Each retail outlet subject to this subsection must keep a copy of the documentation of such installation on site or at its corporate headquarters. In addition, each retail outlet must keep a written record that confirms the periodic testing and ensured operational capacity of the equipment. The required documents must be made available upon request to the Division of Emergency Management and the county emergency management agency.

(4)(a) Subsections (2) and (3) apply to any self-service, full-service, or combination self-service and full-service motor fuel outlet regardless of whether the business is located on the grounds of, or is owned by, another retail business establishment that does not engage in the business of selling motor fuel.

(b) Subsections (2) and (3) do not apply to:

HB 7121

2006

277 1. An automobile dealer;
278 2. A person who operates a fleet of motor vehicles; or
279 3. A person who sells motor fuel exclusively to a fleet of
280 motor vehicles.

281 (5) If any provision of this section or its application to
282 any person or circumstance is held invalid, the invalidity does
283 not affect other provisions or applications of the section which
284 can be given effect without the invalid provision or
285 application, and to this end the provisions of this section are
286 declared severable.

287 Section 3. Section 526.144, Florida Statutes, is created
288 to read:

289 526.144 Florida Disaster Motor Fuel Supplier Program.--

290 (1)(a) There is created the Florida Disaster Motor Fuel
291 Supplier Program within the Department of Community Affairs. The
292 Florida Disaster Motor Fuel Supplier Program shall allow any
293 retail motor fuel outlet doing business in the state to
294 participate in a network of emergency responders to provide fuel
295 supplies and services to government agencies, medical
296 institutions and facilities, critical infrastructure, and other
297 responders, as well as the general public, before, during, and
298 after a declared disaster as described in s. 252.36(2).

299 (b) Participation in the Florida Disaster Motor Fuel
300 Supplier Program shall be at the option of each county governing
301 body. In counties choosing to participate in the program, the
302 local county emergency management agency shall be primarily
303 responsible for administering the program within that county. In
304 counties that do not choose to participate in the program, the

HB 7121

2006

305 Division of Emergency Management shall have the authority to
306 certify businesses as members of the State Emergency Response
307 Team and issue appropriate signage. Guidelines and
308 administration standards for participating counties shall be
309 recommended by the Division of Emergency Management and the
310 county emergency management agency.

311 (c) Participation in the program shall require
312 certification by the Division of Emergency Management or the
313 county emergency management agency of a retail motor fuel
314 outlet's preparedness to provide emergency services.
315 Requirements for certification shall be established by the
316 Division of Emergency Management or the county emergency
317 management agency no later than July 1, 2007. Businesses that
318 are certified shall be issued a State Emergency Response Team
319 logo for public display to alert emergency responders and the
320 public that the business is capable of assisting in an
321 emergency.

322 (2) At a minimum, businesses that are certified as State
323 Emergency Response Team members must have the onsite capability
324 to provide fuel dispensing services to other State Emergency
325 Response Team members within 36 hours after a major disaster has
326 occurred, or demonstrate the ability to have such service
327 available, and agree to make such service available as needed.
328 Businesses may choose to sell motor fuel through a preexisting
329 contract with local, state, and federal response agencies or may
330 provide point-of-sale service to such agencies. In addition,
331 businesses may choose to sell motor fuel to the general public
332 or may be directed by county or state emergency management

HB 7121

2006

officials to provide such service pursuant to ss. 252.35 and
252.38. If requested, appropriate law enforcement security may
be provided to the participating business for the purpose of
maintaining civil order during operating hours.

(3) Persons who are designated as State Emergency Response
Team members and who can produce appropriate identification, as
determined by state or county emergency management officials,
shall be given priority for the purchase of motor fuel at
businesses designated as State Emergency Response Team members.
Businesses may be directed by county or state emergency
management officials to remain open for specified periods during
a declared curfew to provide service for emergency management
personnel. Under such direction, a business shall not be in
violation of the curfew and shall not be penalized for such
operation, nor shall emergency management personnel be in
violation of such curfew. Persons traveling during periods of a
declared curfew shall be required to produce valid official
documentation of their position as a State Emergency Response
Team member or local emergency response agency staff member or
official. Such documentation may include, but is not limited to,
a current State Emergency Response Team identification badge,
current law enforcement agency identification or shield or the
identification or shield of another emergency response agency,
current health care employee identification card, or current
government services identification card indicating a critical
services position, as applicable.

(4) A retail motor fuel outlet that is designated as State
Emergency Response Team member may request priority

HB 7121

2006

361 consideration with respect to the resupply of motor fuel in
362 order to continue to provide fuel and necessary services to
363 emergency responders. Such request is not binding but shall be
364 considered by emergency management agencies in determining
365 appropriate disaster response protocol.

366 (5) A retail motor fuel outlet that chooses to participate
367 in the Florida Disaster Motor Fuel Supplier Program and that
368 purchases and installs equipment to meet the certification
369 requirements of the Florida Disaster Motor Fuel Supplier Program
370 is entitled to a credit against the motor fuel taxes collected
371 at the retail outlet of up to 25 percent of the value of the
372 purchase of equipment and installation required to meet the
373 program certification requirements for purposes of defraying a
374 portion of the costs of purchasing and installing the equipment
375 at the retail outlet. The maximum amount of the tax credit for
376 an individual certified location may not exceed \$15,000. The
377 Florida Department of Revenue is authorized to issue the tax
378 credit after a determination by the department, in consultation
379 with the owner of the retail motor fuel outlet, of the retail
380 outlet's payment of taxes on motor fuel sales or corporate
381 taxes. The owner of the retail outlet must apply to the
382 Department of Revenue for the credit on forms developed by the
383 department and pursuant to procedures adopted by the department.
384 The Department of Revenue shall provide by rule forms and
385 procedures for applying for and granting the tax credit
386 authorized under this subsection.

387 (6) Notwithstanding any other law or local ordinance, to
388 ensure an appropriate emergency management response to major

HB 7121

2006

disasters in the state, the regulation of and requirements for
the siting and placement of an alternate power source and any
related equipment at motor fuel terminal facilities,
wholesalers, and retail sales outlets shall be exclusively
controlled by the state.

(7) The Florida Energy Office of the Department of
Environmental Protection shall review progress in postdisaster
motor fuel supply distribution and provide a report to the
Speaker of the House of Representatives and the President of the
Senate by March 1, 2007. The report shall include information on
statewide compliance with s. 526.143 and identification of all
retail motor fuel outlets that are participating in the Florida
Disaster Motor Fuel Supplier Program.

Section 4. Section 553.509, Florida Statutes, is amended
to read:

553.509 Vertical accessibility.--Nothing in sections
553.501-553.513 or the guidelines shall be construed to relieve
the owner of any building, structure, or facility governed by
those sections from the duty to provide vertical accessibility
to all levels above and below the occupiable grade level,
regardless of whether the guidelines require an elevator to be
installed in such building, structure, or facility, except for
the areas, rooms, and spaces described in subsections (1), (2),
and (3):

(1) Elevator pits, elevator penthouses, mechanical rooms,
piping or equipment catwalks, and automobile lubrication and
maintenance pits and platforms.†

416 (2) Unoccupiable spaces, such as rooms, enclosed spaces,
417 and storage spaces that are not designed for human occupancy,
418 for public accommodations, or for work areas. ~~and~~

419 (3) Occupiable spaces and rooms that are not open to the
420 public and that house no more than five persons, including, but
421 not limited to, equipment control rooms and projection booths.

422 (4)(a) Any person, firm, or corporation that owns or
423 operates a residential multifamily dwelling, including a
424 condominium, that is at least 75 feet high and contains a public
425 elevator, as described in s. 399.035(2) and (3) and rules
426 adopted by the Florida Building Commission, shall have at least
427 one public elevator that is capable of operating on an alternate
428 power source for emergency purposes. Alternate power shall be
429 available for the purpose of allowing all residents access for a
430 specified number of hours each day over a 5-day period following
431 a natural disaster, manmade disaster, emergency, or other civil
432 disturbance that disrupts the normal supply of electricity. The
433 alternate power source that controls elevator operations must
434 also be capable of powering any connected fire alarm system in
435 the building.

436 (b) At a minimum, the elevator must be appropriately
437 prewired and prepared to accept an alternate power source and
438 must have a connection on the line side of the main disconnect,
439 pursuant to National Electric Code Handbook, Article 700. In
440 addition to the required power source for the elevator and
441 connected fire alarm system in the building, the alternate power
442 supply must be sufficient to provide emergency lighting to the
443 lobbies, hallways, and other portions of the building used by

HB 7121

2006

the public. Residential multifamily dwellings must have an available generator and fuel source on the property or have proof of a current guaranteed service contract for such equipment and fuel source to operate the elevator on an on-call basis within 24 hours after a request. By December 31, 2006, local building inspectors must provide to the county emergency management agency verification of engineering plans for residential multifamily dwellings that provide for the capability to generate power by alternate means. Compliance with installation requirements and operational capability requirements must be verified by local building inspectors and reported to the county emergency management agency by December 31, 2007.

(c) Each newly constructed residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, must have at least one public elevator that is capable of operating on an alternate power source for the purpose of allowing all residents access for a specified number of hours each day over a 5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The alternate power source that controls elevator operations must be capable of powering any connected fire alarm system in the building. In addition to the required power source for the elevator and connected fire alarm system, the alternate power supply must be sufficient to provide emergency lighting to the lobbies,

HB 7121

2006

472 hallways, and other portions of the building used by the public.
473 Engineering plans and verification of operational capability
474 must be provided by the local building inspector to the county
475 emergency management agency before occupancy of the newly
476 constructed building.

477 (d) Each person, firm, or corporation that is required to
478 maintain an alternate power source under this subsection shall
479 maintain a written emergency operations plan that details the
480 sequence of operations before, during, and after a natural or
481 manmade disaster or other emergency situation. The plan must
482 include, at a minimum, a life safety plan for evacuation,
483 maintenance of the electrical and lighting supply, and
484 provisions for the health, safety, and welfare of the residents.
485 In addition, the owner or operator of the residential
486 multifamily dwelling must keep written records of quarterly
487 inspections of life safety equipment and alternate power
488 generation equipment, which confirm that such equipment is
489 properly maintained and in good working condition, and any
490 contracts for alternate power generation equipment. The written
491 emergency operations plan and inspection records shall be open
492 for periodic inspection by local and state government agencies
493 as deemed necessary. The owner or operator must keep a generator
494 key in a lockbox posted at or near any installed generator unit.

495 (e) Multistory affordable residential dwellings for
496 persons age 62 and older that are financed or insured by the
497 United States Department of Housing and Urban Development must
498 make every effort to obtain grant funding from the Federal
499 Government or the Florida Housing Finance Corporation to comply

HB 7121

2006

500 with this subsection. If an owner of such a residential dwelling
501 cannot comply with the requirements of this subsection, the
502 owner must develop a plan with the local emergency management
503 agency to ensure that residents are evacuated to a place of
504 safety in the event of a power outage resulting from a natural
505 or manmade disaster or other emergency situation that disrupts
506 the normal supply of electricity for an extended period of time.
507 A place of safety may include, but is not limited to, relocation
508 to an alternative site within the building or evacuation to a
509 local shelter.

510 (f) As a part of the annual elevator inspection required
511 under s. 399.061, certified inspectors shall confirm that all
512 installed generators required by this chapter are in working
513 order, that the inspection records are current, and that the
514 required generator key is present in the lockbox posted at or
515 near the installed generator. If a building does not have an
516 installed generator, the inspector shall confirm that the
517 appropriate prewiring and switching capabilities are operational
518 and that a contract for contingent services for alternate power
519 is current for the operating period.

520
521 However, buildings, structures, and facilities must, as a
522 minimum, comply with the requirements in the Americans with
523 Disabilities Act Accessibility Guidelines.

524 Section 5. Paragraph (i) of subsection (2) of section
525 252.35, Florida Statutes, is amended, paragraphs (j) through (v)
526 are renumbered as paragraphs (k) through (w), respectively, and
527 a new paragraph (j) is added to that subsection, to read:

HB 7121

2006

528 252.35 Emergency management powers; Division of Emergency
529 Management.--

530 (2) The division is responsible for carrying out the
531 provisions of ss. 252.31-252.90. In performing its duties under
532 ss. 252.31-252.90, the division shall:

533 (i) Institute statewide public awareness programs. This
534 shall include an intensive public educational campaign on
535 emergency preparedness issues, including, but not limited to,
536 the personal responsibility of individual citizens to be self-
537 sufficient for up to 72 hours following a natural or manmade
538 disaster. The public educational campaign shall include relevant
539 information on statewide disaster plans, evacuation routes, fuel
540 suppliers, and shelters. All educational materials must be
541 available in alternative formats and mediums to ensure that they
542 are available to persons with disabilities.

543 (j) The Division of Emergency Management and the
544 Department of Education shall coordinate with the Agency For
545 Persons with Disabilities to provide an educational outreach
546 program on disaster preparedness and readiness to individuals
547 who have limited English skills and identify persons who are in
548 need of assistance but are not defined under special-needs
549 criteria.



550 Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB AG 06-02
SPONSOR(S): Agriculture Committee
TIED BILLS:

Department of Agriculture and Consumer Services

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee		Kaiser 	Reese 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

PCB AG 06-02 addresses a variety of issues relating to the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Revises education requirements for a private security license requiring Class "D" licensees to complete training within 180 days of applying for the license;
- Defines "caller identification service" and requires telephone solicitors to transmit certain identifying information to be displayed by a caller identification service;
- Preempts the regulation of refunds by retail sales establishments to the department;
- Clarifies provisions prohibiting local governments from imposing monetary penalties on owners of shopping carts under certain conditions;
- Defines the term "alternative fuel" and includes alternative fuel in the definition of petroleum fuel for purposes of inspection of petroleum fuel quality;
- Exempts persons delivering specified amounts of liquefied petroleum gas to consumers from having to meet minimum storage requirements;
- Eliminates a requirement for an agency receiving a consumer complaint from the department to file progress reports with the department; and
- Creates an exemption from insurance requirements for a governmental entity that is operating an amusement ride.

The bill has no fiscal impact on state or local government. The effective date of this legislation is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires telephone solicitors to transmit the phone number and name of the company they represent to the caller identification service of the recipient of the telephone solicitation. The bill also provides for the preemption of the regulation of refunds by retail sales establishments to the Department of Agriculture and Consumer Services (department). The bill grants the department authority to inspect facilities selling alternative fuels. The bill deletes a requirement for other agencies to report back to the department regarding the disposition of complaints.

Maintain public security: The bill requires private security officers to complete the total 40 hours of professional training.

B. EFFECT OF PROPOSED CHANGES:

Division of Licensing

When the Cabinet was reorganized in 2003, the Division of Licensing (division) was transferred from the Department of State to the Department of Agriculture and Consumer Services (department). There are still some statutes that reference the division operating within the Department of State. This legislation corrects those references to reflect the transfer of the division to the department.

Security Officers (Class "D") Licensure

Currently, an applicant for a Class "D" license is required to complete a minimum of 40 hours of professional training at a school or training facility licensed by the department.¹ By rule, the department establishes the general content of the training. An applicant may satisfy the training requirement either by successfully completing all 40 hours of training before the initial license application or by successfully completing 24 hours of training before the initial license application and completing the remaining 16 hours of training upon the first application for renewal of the license.² This exemption enables a person, licensed prior to October 1, 1994, to allow his/her license to expire, then re-apply using the same 24-hours of training, thus avoiding ever completing the remaining 16 hours of training.

The bill requires the initial 24 hours of training to be taken for licensure, with the remaining 16 hours of training to be completed within 180 days of submission of the initial application. The bill provides for an individual's license to be suspended in the event documentation of the training is not submitted within the specified timeframe.

Telephone Solicitation

The Division of Consumer Services (division), within the department, regulates telephone solicitation. Current law requires telephone solicitors, making unsolicited telephonic sales calls to a residential, mobile, or telephonic paging device telephone number, to identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact with the person who is the subject of the solicitation telephone call.³ The law makes no mention regarding information transmitted by the solicitation call to the caller identification service.

The bill requires persons making telephonic sales call to transmit the telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. The bill provides that the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a

¹ Section 493.6303(4)(a), F.S.

² Individual licensed before October 1, 1994, do not have to complete additional training hours in order to renew their licenses. (s. 493.6303(4)(b), F.S.)

³ Section 501.059(2), F.S.

telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours, may be substituted.

"Caller identification service" is defined as a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

Retail Sales Establishments

Existing law provides that every retail sales establishment offering goods for sale to the general public that offers no cash refund, credit refund, or exchange of merchandise must post a sign so stating at the point of sale. Failure to exhibit a "no refund" sign under such circumstances at the point of sale means that a refund or exchange policy exists, and the policy shall be presented in writing to the consumer upon request. Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase, provided that the merchandise is unused and in the original carton, if one was furnished.⁴

The bill expressly preempts the regulation of refunds in retail sales establishments to the department and authorizes the department to adopt rules to enforce the provisions s. 501.142, F.S. The bill also authorizes a local government to impose penalties. The bill provides means to the department for addressing violations. Monies recovered by the department may be deposited into the General Inspection Trust Fund. Monies recovered by a local government may be deposited into the appropriate local account.

Shopping Carts

Current law provides that no fee, fine, or costs may be assessed against the owner of a shopping cart found on public property, unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and such fee, fine, or cost has been approved by the department.⁵

The bill specifies that no fee, fine, or costs may be assessed against the owner of a shopping cart unless the cart is found on public property **and** it was removed from the premises or parking area of a retail establishment by the cart's owner or an employee acting on the owner's behalf.

Alternative Fuel

Chapter 525, F.S., addresses gasoline and oil inspection but does not specifically include alternative fuels, such as alcohol-blended and biodiesel fuels. In light of the recent interest and advancements in the use of alternative fuels and their increasing presence in the marketplace, the department sees a need to define and establish quality standards for such fuels.

The bill provides a definition for alternative fuel. In doing so, the department is granted the authority to inspect facilities selling alternative fuels to the general public. The department is also authorized to adopt relevant fuel quality standards for alternative fuels into department rule.

Liquefied Petroleum Gas

Section 527.11, F.S., provides for minimum storage requirements relating to liquefied petroleum gas (LPG). The intent of minimum storage requirements is to ensure there is an adequate supply of product during peak periods such as winter months or hurricane season, when there is the potential for product shortage. Current law⁶ provides an exemption from minimum storage requirements for companies operating cylinder exchange units or a single dispenser serving liquid product directly to the public. These companies are not providing product for essential services, such as home heating, but rather providing product for non-essential services, such as grills, mosquito control, etc. The current

⁴ Section 501.142(1), F.S.

⁵ Section 506.5131(2), F.S.

⁶ Section 527.11(3), F.S.

language prohibits these companies from delivering small cylinders of LPG to their customers or from conducting the periodic testing required by law to ensure cylinder suitability for continued safe use, without first obtaining either a storage container of 18,000 gallons or acquiring multiple licenses.

The bill allows a licensee who has a single dispensing unit to deliver small cylinders of LPG to residential customers without the requirement of building or leasing 18,000 gallons worth of storage.

Consumer Complaint Reports

Current law⁷ requires the Division of Consumer Services to forward consumer complaints, which fall under the jurisdiction of another agency, to that agency. The receiving agency has 30 days to acknowledge receipt of the complaint and report on the disposition of the complaint. If the 30 day deadline is not met, the agency must file additional reports with the department concerning the status of the complaint.

The bill deletes the requirement for other agencies to report back to the department regarding the disposition of the complaint. Additionally, the bill removes a cross-reference to the report from statute.

Fair Rides

Current statute requires amusement ride operators to have in effect, at all times, an insurance policy or surety bond in the amount of \$1 million per occurrence and \$1 million in the aggregate procured from an insurer or surety that is licensed to transact business in Florida or that is approved as a surplus lines insurer. This requirement is not appropriate for governmental entities who have limited liability pursuant to s. 768.28(16), F.S.

The bill creates an exemption for amusement rides operated by governmental entities that are covered under the limited liability statutes.

Other

The bill corrects a cross-reference that was inadvertently omitted, which clarifies that liquid petroleum inspections fall under the Division of Standards within the department.

C. SECTION DIRECTORY:

Section 1: Amends s. 493.6106, F.S.; corrects reference to state agency.

Section 2: Amends s. 493.6121, F.S.; corrects reference to state agency.

Section 3: Amends s. 493.6303, F.S.; directs the Department of Agriculture and Consumer Services (department) to establish training hours required for Class "D" private security licensure; provides timeframe for completing training; provides for suspension of license in certain circumstances; and, provides exemption from training requirements.

Section 4: Amends s. 501.059, F.S.; prohibits telephone solicitor from blocking certain information from a recipient's caller identification service; provides an exception; and provides a definition.

Section 5: Amends s. 501.142, F.S.; preempts the regulation of refunds to the department; allows for the adoption of rules for enforcement; provides for enforcement by local government; provides penalties for violations; provides for moneys recovered to be deposited into designated trust fund; authorizes a local government to impose penalties; and, provides for moneys recovered by local governments to be deposited into designated accounts.

Section 6: Amends s. 506.5131, F.S.; revises provisions relating to shopping carts.

Section 7: Amends s. 525.01, F.S.; provides a definition for alternative fuel.

⁷ Section 570.544, F.S.

Section 8: Amends s. 527.11, F.S.; exempts the delivery of certain amounts of propane gas for use with outdoor equipment or appliances from provisions relating to the delivery of liquefied petroleum gas; and, requires a person delivering liquefied petroleum gas in bulk to comply with certain storage requirements.

Section 9: Amends s. 570.46, F.S.; revises the duties of the Division of Standards.

Section 10: Amends s. 570.47, F.S.; revises a cross reference.

Section 11: Amends s. 570.544, F.S.; deletes provisions requiring agencies receiving a complaint to file a progress report with the Division of Consumer Services.

Section 12: Repeals s. 526.3135, F.S.; relating to reports filed with the Division of Consumer Services.

Section 13: Amends s. 616.242, F.S.; exempts certain governmental entities from insurance requirements.

Section 14: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Division of Standards: The department states that there is no fiscal impact currently associated with the alternative fuels. However, as these fuels capture a significant market share in future years, there will be additional costs to the department associated with regulation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the department, the exemption of bulk storage in order to deliver 40 pounds or less of propane capacity will have a positive impact on certain LP gas licensees. This exemption results in considerable, indeterminate cost savings for the licensee, many of whom are small business operators.

The department reports that exempting governmental entities from insurance requirements for amusement rides will have a positive affect on counties and municipalities that operate amusement rides (i.e. water slides, carousels, trains). Insurance requirements imposed currently by s. 616.242(9), F.S., will not apply if the municipalities are covered by the provisions of s. 768.28(16), F.S., of the state's self insurance program.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services rule-making authority to enforce provisions relating to regulation of refunds from retail sales establishments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

PCB AG 06-02

Redraft - A

2006

1 A bill to be entitled
2 An act relating to the Department of Agriculture and
3 Consumer Services; amending s. 493.6106, F.S.; clarifying
4 that private investigative, private security, and
5 repossession services are licensed by the department;
6 amending s. 493.6121, F.S.; authorizing the department to
7 institute judicial proceedings to enforce ch. 493, F.S.,
8 or any rule or order of the department; amending s.
9 493.6303, F.S.; revising the requirements for a Class "D"
10 private security license; requiring the department to
11 establish the number of hours of each subject area to be
12 taught in training; providing for automatic suspension of
13 a license upon failure to submit documentation of
14 completing the required training; providing exemptions;
15 amending s. 501.059, F.S.; prohibiting a telephone
16 solicitor from blocking certain information from a
17 recipient's caller identification service; providing an
18 exception; authorizing a telephone solicitor to substitute
19 certain information provided to the recipient's caller
20 identification service; providing a definition; amending
21 s. 501.142, F.S.; providing that the regulation of refunds
22 in retail sales establishments is preempted to the
23 department; authorizing the department to adopt rules;
24 authorizing the department to enter orders for certain
25 violations; requiring that any moneys recovered by the
26 department as a penalty be deposited in the General
27 Inspection Trust Fund; authorizing a local government to
28 impose penalties; requiring that any moneys recovered by a
29 local government as a penalty be deposited in the

PCB AG 06-02

Redraft - A

2006

appropriate local account; amending s. 506.5131, F.S.;
revising provisions relating to assessment of fees, fines,
and costs against the owner of a shopping cart; amending
s. 525.01, F.S.; defining the term "alternative fuel" for
purposes of ch. 525, F.S., relating to the inspection of
gasoline and oil; amending s. 527.11, F.S.; exempting the
delivery of certain amounts of propane gas for use with
outdoor equipment or appliances from provisions governing
the delivery of liquefied petroleum gas; requiring that a
person delivering liquefied petroleum gas in bulk comply
with certain storage requirements; amending ss. 570.46 and
570.47, F.S.; authorizing the Division of Standards within
the department to enforce ch. 527, F.S., relating to the
sale of liquefied petroleum gas; amending s. 570.544,
F.S.; deleting provisions requiring that an office or
agency receiving a complaint file progress reports with
the Division of Consumer Services within the department;
repealing s. 526.3135, F.S., relating to reports by the
Division of Standards, to conform to changes made by the
act; amending s. 616.242, F.S.; exempting certain
governmental entities from requirements that operators of
amusement rides maintain specified amounts of insurance
coverage; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section
493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.--

PCB AG 06-02

Redraft - A

2006

(2) Each agency shall have a minimum of one physical location within this state from which the normal business of the agency is conducted, and this location shall be considered the primary office for that agency in this state.

(c) Each Class "A," Class "B," Class "R," branch office, or school licensee shall display, in a place that is in clear and unobstructed public view, a notice on a form prescribed by the department stating that the business operating at this location is licensed and regulated by the Department of Agriculture and Consumer Services State and that any questions or complaints should be directed to the department.

Section 2. Subsections (5) and (7) of section 493.6121, Florida Statutes, are amended to read:

493.6121 Enforcement; investigation.--

(5) In order to carry out the duties of the department prescribed in this chapter, designated employees of the Division of Licensing of the Department of Agriculture and Consumer Services State may obtain access to the information in criminal justice information systems and to criminal justice information as defined in s. 943.045, on such terms and conditions as are reasonably calculated to provide necessary information and protect the confidentiality of the information. Such criminal justice information submitted to the division is confidential and exempt from the provisions of s. 119.07(1).

(7) The department may institute ~~of Legal Affairs shall represent the Department of Agriculture and Consumer Services in~~ judicial proceedings in the appropriate circuit court seeking enforcement of this chapter, or any rule or order of the department ~~upon an action by any party seeking redress against~~

PCB AG 06-02

Redraft - A

2006

the department, and shall coordinate with the department in the conduct of any investigations incident to its legal responsibility.

Section 3. Subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.--In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(4)(a) Effective January 1, 2007 ~~October 1, 1994~~, an applicant for a Class "D" license must complete ~~have completed~~ a minimum of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content and number of hours of each subject area to be taught ~~the training~~.

(b) An applicant may fulfill the training requirement prescribed in paragraph (a) by submitting proof of:

1. Successful completion of the total number of required ~~40~~ hours of training before initial application for a Class "D" license; or

2. Successful completion of 24 hours of training before initial application ~~for~~, and the remaining 16 hours of training within 180 days after the date that upon the first application is submitted for renewal of, a Class "D" license. If documentation of completion of the required training is not submitted within the specified timeframe, the individual's license is automatically suspended until such time as proof of the required training is provided to the department. However, Individuals licensed before October 1, 1994, or individuals who have

PCB AG 06-02

Redraft - A

2006

117 successfully completed 40 hours of professional training before
118 January 1, 2007, at a school or training facility that is
119 licensed by the department are exempt from the training
120 requirement of paragraph (a) ~~need not complete additional~~
121 ~~training hours in order to renew their licenses.~~

122
123 However, any person whose license has been revoked, suspended
124 pursuant to subparagraph 2., or ~~whose license has been~~ expired
125 for 1 year or longer is considered, upon reapplication for a
126 license, an initial applicant and must submit proof of successful
127 completion of 40 hours of professional training at a school or
128 training facility licensed by the department before a license
129 will be issued.

130 Section 4. Paragraph (c) is added to subsection (7) of
131 section 501.059, Florida Statutes, to read:

132 501.059 Telephone solicitation.--

133 (7)

134 (c) It shall be unlawful for any person who makes a
135 telephonic sales call or causes a telephonic sales call to be
136 made to fail to transmit or cause to be transmitted the telephone
137 number and, when made available by the telephone solicitor's
138 carrier, the name of the telephone solicitor to any caller
139 identification service in use by a recipient of a telephonic
140 sales call. However, it shall not be a violation to substitute,
141 for the name and telephone number used in or billed for making
142 the call, the name of the seller on behalf of which a telephonic
143 sales call is placed and the seller's customer service telephone
144 number, which is answered during regular business hours. For
145 purposes of this section, the term "caller identification

PCB AG 06-02

Redraft - A

2006

146 service" means a service that allows a telephone subscriber to
147 have the telephone number and, where available, the name of the
148 calling party transmitted contemporaneously with the telephone
149 call and displayed on a device in or connected to the
150 subscriber's telephone.

151 Section 5. Section 501.142, Florida Statutes, is amended to
152 read:

153 501.142 Retail sales establishments; preemption; notice of
154 refund policy; exceptions; penalty.--

155 (1) The regulation of refunds is preempted to the
156 Department of Agriculture and Consumer Services notwithstanding
157 any other law or local ordinance to the contrary. Every retail
158 sales establishment offering goods for sale to the general public
159 that offers no cash refund, credit refund, or exchange of
160 merchandise must post a sign so stating at the point of sale.
161 Failure of a retail sales establishment to exhibit a "no refund"
162 sign under such circumstances at the point of sale shall mean
163 that a refund or exchange policy exists, and the policy shall be
164 presented in writing to the consumer upon request. Any retail
165 establishment failing to comply with the provisions of this
166 section shall grant to the consumer, upon request and proof of
167 purchase, a refund on the merchandise, within 7 days of the date
168 of purchase, provided the merchandise is unused and in the
169 original carton, if one was furnished. Nothing herein shall
170 prohibit a retail sales establishment from having a refund policy
171 which exceeds the number of days specified herein. The department
172 may adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce
173 the provisions of this section. However, this subsection does not
174 prohibit a local government from enforcing the provisions

PCB AG 06-02

Redraft - A

2006

established by this section or department rule.

(2) The provisions of this section shall not apply to the sale of food, perishable goods, goods which are custom made, goods which are custom altered at the request of the customer, or goods which cannot be resold by the merchant because of any law, rule, or regulation adopted by a governmental body.

(3) The department may enter an order doing one or more of the following if the department finds that a person has violated or is operating in violation of any of the provisions of this section or the rules or orders issued under this section:

(a) Issue a notice of noncompliance pursuant to s. 120.695.

(b) Impose an administrative fine not to exceed \$100 for each violation.

(c) Direct the person to cease and desist specified activities.

(4) The administrative proceedings that could result in the entry of an order imposing any of the penalties specified in subsection (3) are governed by chapter 120.

(5) Any moneys recovered by the Department of Agriculture and Consumer Services as a penalty under this section shall be deposited in the General Inspection Trust Fund.

(6) Upon the first violation of this section, a local government may issue a written warning. Upon a second and any subsequent violation, a local government may impose a fine of up to \$50 per violation. Any moneys recovered by the local government as a penalty under this section shall be deposited in the appropriate local account.

Section 6. Section 506.5131, Florida Statutes, is amended to read:

PCB AG 06-02

Redraft - A

2006

506.5131 Return of shopping carts; assessment of fees, fines, and costs.--

(1) The rightful owner of any shopping cart with a registered name or mark found on public property shall be immediately notified of its recovery.

(2) Notwithstanding any other provision of law or local ordinance, no fee, fine, or costs may be assessed against the owner of a shopping cart unless the shopping cart was found on public property and, ~~unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and the~~ such fee, fine, or cost has been approved by the Department of Agriculture and Consumer Services.

Section 7. Subsection (1) of section 525.01, Florida Statutes, is amended to read:

525.01 Gasoline and oil to be inspected.--

(1) For the purpose of this chapter:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Petroleum fuel" means all gasoline, kerosene (except when used as aviation turbine fuel), diesel fuel, benzine, ~~or~~ other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in this state.

(c) "Alternative fuel" means:

1. Methanol, denatured ethanol, or other alcohols;

2. Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, or other alcohols with gasoline or

PCB AG 06-02

Redraft - A

2006

other fuels, or such other percentage, but not less than 70
percent, as determined by the department by rule, to provide for
requirements relating to cold start, safety, or vehicle
functions;

3. Hydrogen;

4. Coal-derived liquid fuels; and

5. Fuels, other than alcohol, derived from biological
materials.

Section 8. Section 527.11, Florida Statutes, is amended to
read:

527.11 Minimum storage.--

(1) Every person who engages in the distribution of
liquefied petroleum gas for resale to domestic, commercial, or
industrial consumers as a prerequisite to obtaining a liquefied
petroleum gas license shall install, own, or lease a bulk storage
filling plant of not less than 18,000 gallons (water capacity)
within the state and shall be located within a 75-mile radius of
the licensed company's business location. This bulk storage
filling plant must have loading and unloading provisions solely
for the licenseholder and be operated and maintained in
compliance with this chapter for the duration of the license.

(2) A dealer in liquefied petroleum gas licensed as of
August 31, 2000, who has entered or who enters into a written
agreement with a wholesaler that the wholesaler will provide
liquefied petroleum gas to the dealer for a period of 12
continuous months is exempt from the requirements of subsection
(1), if the wholesaler has at least 18,000 gallons (water
capacity) of bulk storage within this state permanently connected
for storage, which is used as such for each dealer to whom gas is

PCB AG 06-02

Redraft - A

2006

sold, and if the wholesaler has loading and unloading provisions. Such dealer must provide certification of this agreement on a form provided by the department to the department before her or his license may be issued. The form must be signed by both the wholesaler or his or her agent and the dealer or his or her agent and must be submitted annually with the license renewal application. A dealer who does not provide written proof of minimum storage may have her or his license denied, suspended, or revoked. A ~~No~~ wholesaler may not enter into written agreements that allocate an amount of storage that exceeds the wholesaler's total storage capacity minus 18,000 gallons (water capacity).

(3) A dealer in liquefied petroleum gas operating a single dispensing unit for the sole purpose of direct product sale to customers, including delivery of cylinders of 40 pounds or less of propane gas capacity for use with outdoor equipment or appliances that are not connected to or part of the permanent interior piping of a structure, (no deliveries) or an operator of a cylinder exchange unit is exempt from the requirements of this section. A person may not deliver liquefied petroleum gas by cargo vehicle unless the person complies with requirements for minimum storage.

Section 9. Subsection (5) is added to section 570.46, Florida Statutes, to read:

570.46 Division of Standards; powers and duties.--The duties of the Division of Standards include, but are not limited to:

(5) Enforcing the provisions of chapter 527.

Section 10. Subsection (2) of section 570.47, Florida Statutes, is amended to read:

PCB AG 06-02

Redraft - A

2006

570.47 Director; qualifications; duties.--

(2) The director shall supervise, direct, and coordinate the activities of the division and to that end shall, under the direction of the department, enforce the provisions of chapters 501, 525, 526, 527, 531, and 616.

Section 11. Subsections (6) through (9) of section 570.544, Florida Statutes, are amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.--

(6)(a) The office or agency to which a complaint has been referred shall within 30 days acknowledge receipt of the complaint ~~and report on the disposition made of the complaint. In the event a complaint has not been disposed of within 30 days, the receiving office or agency shall file progress reports with the Division of Consumer Services no less frequently than 30 days until final disposition.~~

~~(b) The report shall contain at least the following information:~~

~~1. A finding of whether the receiving agency has jurisdiction of the subject matter involved in the complaint.~~

~~2. Whether the complaint is deemed to be frivolous, sham, or without basis in fact or law.~~

~~3. What action has been taken and a report on whether the original complainant was satisfied with the final disposition.~~

~~4. Any recommendation regarding needed changes in law or procedure which in the opinion of the reporting agency or office will improve consumer protection in the area involved.~~

~~(7)(a) If the office or agency receiving a complaint fails to file a report as contemplated in this section, that failure~~

PCB AG 06-02

Redraft - A

2006

~~shall be construed as a denial by the receiving office or agency that it has jurisdiction of the subject matter contained in the complaint.~~

~~(b)~~ If an office or agency receiving a complaint determines that the matter presents a prima facie case for criminal prosecution or if the complaint cannot be settled at the administrative level, the complaint together with all supporting evidence shall be transmitted to the Department of Legal Affairs or other appropriate enforcement agency with a recommendation for civil or criminal action warranted by the evidence.

~~(7)(8)~~ The records of the Division of Consumer Services are public records. However, customer lists, customer names, and trade secrets are confidential and exempt from the provisions of s. 119.07(1). Disclosure necessary to enforcement procedures shall not be construed as violative of this prohibition.

~~(8)(9)~~ It shall be the duty of the Division of Consumer Services to maintain records and compile summaries and analyses of consumer complaints and their eventual disposition, which data may serve as a basis for recommendations to the Legislature and to state regulatory agencies.

Section 12. Section 526.3135, Florida Statutes, is repealed.

Section 13. Subsection (9) of section 616.242, Florida Statutes, is amended to read:

616.242 Safety standards for amusement rides.--

(9) INSURANCE REQUIREMENTS.--

(a) An owner may not operate an amusement ride unless the owner has in effect at all times of operation insurance meeting the following requirements:

PCB AG 06-02

Redraft - A

2006

1. An insurance policy in an amount of not less than \$1 million per occurrence, \$1 million in the aggregate, which insures the owner of the amusement ride against liability for injury to persons arising out of the use of the amusement ride; or

2. A bond in a like amount; however, the aggregate liability of the surety under the bond may not exceed the face amount thereof.

(b) The policy or bond must be procured from an insurer or surety that is licensed to transact business in this state or that is approved as a surplus lines insurer.

(c) The insurance requirements imposed under this subsection do not apply to a governmental entity that is covered by the provisions of s. 768.28(16).

Section 14. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. PCB AG 06-02

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: **Agriculture**

Representative **Poppell** offered the following:

Amendment (with title amendment)

Remove lines 91-129 and insert:

Section 3. Effective January 1, 2007, subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.--In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(4)(a) ~~Effective October 1, 1994, a~~An applicant for a Class "D" license must complete ~~have completed~~ a minimum of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content and number of hours of each subject area to be taught ~~the training~~.

(b) An applicant may fulfill the training requirement prescribed in paragraph (a) by submitting proof of:

1. Successful completion of the total number of required ~~40~~ hours of training before initial application for a class "D" license; or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

23 2. Successful completion of 24 hours of training before
24 initial application for a Class "D" license, and successful
25 completion of the remaining 16 hours of training within 180 days
26 after the date that ~~upon~~ the first application is submitted for
27 renewal of, a Class "D" license. If documentation of completion
28 of the required training is not submitted within the specified
29 timeframe, the individual's license is automatically suspended
30 until such time as proof of the required training is provided to
31 the department. ~~However, individuals licensed before October 1,~~
32 ~~1994, need not complete additional training hours in order to~~
33 ~~renew their licenses.~~

34
35 However, Any person whose license has been revoked, suspended
36 pursuant to subparagraph (b)2., or whose license has been
37 expired for 1 year or longer is considered, upon reapplication
38 for a license, an initial applicant and must submit proof of
39 successful completion of 40 hours of professional training at a
40 school or training facility licensed by the department as
41 prescribed in paragraph (a) before a license will be issued.
42 Any person whose license was issued before January 1, 2007, and
43 whose license has been expired for less than 1 year must, upon
44 reapplication for a license, submit documentation of completion
45 of the total number of hours of training prescribed by law at
46 the time his or her initial license was issued before another
47 license will be issued. This subsection does not require an
48 individual licensed before January 1, 2007, to complete
49 additional training hours in order to renew an active license,
50 beyond the required total amount of training within the
51 timeframe prescribed by law at the time he or she was licensed.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

54 | ===== T I T L E A M E N D M E N T =====

55 | Remove line 14 and insert:

56 | completing the required training; prescribing requirements and

57 | conditions for persons licensed before a certain date;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **PCB AG 06-02**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Committee hearing bill: **Agriculture**

Representative **Poppell** offered the following:

Amendment (with title amendment)

Between lines 150-151, insert:

(d) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to intentionally alter the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to defraud, confuse, or financially or otherwise injure the recipient of a telephonic sales call, or in order to obtain personal information from the recipient of a telephonic sales call which may be used in a fraudulent or unlawful manner.

===== **T I T L E A M E N D M E N T** =====

Remove line 20 and insert:

identification service; providing a definition; prohibiting alteration of a caller's voice during a telephonic sales call under certain circumstances and for certain purposes; amending

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **PCB AG 06-02**

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

1 Committee hearing bill: **Agriculture**

2 Representative **Poppell** offered the following:

3
4 **Amendment**

5 Remove lines 136 and insert:

6 made to fail to transmit or cause not to be transmitted the
7 telephone
8